

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

Lawrence J. Semenza, III, Esq., Bar No. 7174
Email: ljs@skrlawyers.com
Christopher D. Kircher, Esq., Bar No. 11176
Email: cdk@skrlawyers.com
Jarrod L. Rickard, Esq., Bar No. 10203
Email: jlr@skrlawyers.com
Katie L. Cannata, Esq., Bar No. 14848
Email: klc@skrlawyers.com
SEMENZA KIRCHER RICKARD
10161 Park Run Dr., Ste. 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803
Facsimile: (702) 920-8669

*Attorneys for Plaintiffs Sarah Simmons, Aaron McAllister,
ROI-IT, LLC and all others similarly situated*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SARAH SIMMONS, an individual; AARON
MCALLISTER, an individual; ROI-IT,
LLC, a Nevada limited liability company on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

CACHET FINANCIAL SERVICES, a
California corporation; FINANCIAL
BUSINESS GROUP HOLDINGS, a
California corporation; MYPAYROLLHR
LLC, a Delaware limited liability company;
CLOUD PAYROLL, LLC, a Delaware
limited liability company; VALUEWISE
CORP., a Delaware corporation; MICHAEL
MANN, an individual; NATIONAL
PAYMENT CORPORATION, a Florida
corporation,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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For their Class Action Complaint, Plaintiffs Sarah Simmons ("Simmons"), Aaron McAllister ("McAllister"), ROI-IT, LLC ("ROI-IT") (collectively, "Plaintiffs") and all others similarly situated, complain against Defendants Cachet Financial Services ("Cachet"), a California corporation, Financial Business Group Holdings ("FBG"), a California corporation, MyPayrollHR, LLC ("MyPayroll"), a Delaware limited liability company, Cloud Payroll, LLC ("Cloud Payroll"), a Delaware limited liability company, ValueWise, Corp. ("ValueWise"), a Delaware corporation, Michael Mann ("Mann") and National Payment Corporation ("NatPay"), a Florida corporation (collectively, "Defendants", except where NatPay would otherwise be excluded) as follows:

NATURE OF THE ACTION

1. This is an action arising out of the misappropriation of nearly \$35,000,000.00 in payroll funds and related payroll taxes across the United States by payroll processing firms and their agents. Defendants have individually and collectively misappropriated funds belonging to both employers and employees who have utilized services provided by the Defendants.

DEMAND FOR JURY TRIAL

2. Plaintiffs and all others similarly situated demand a jury trial.

JURISDICTION

3. The claims herein are brought and jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331 as this matter involves claims arising under the laws of the United States and 28 U.S.C. § 1332(d)(2) as this matter is a proposed class action with an amount in controversy exceeding \$5,000,000.00, involving members of a class of plaintiffs that are citizens of a State different from any defendant.

VENUE

4. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391(b) as a substantial part of the claims arose in this district.

PARTIES

5. Simmons is a resident of Clark County, Nevada and is both a majority owner of ROI-IT and employee of ROI-IT.

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1 6. McAllister is a resident of Clark County, Nevada and is an employee of ROI-IT.

2 7. ROI-IT is a Nevada limited liability company conducting business in Clark
3 County, Nevada.

4 8. Plaintiffs as class representatives, meet all requirements of both Fed. R. Civ. P. 23
5 and Nev. R Civ. P. 23. The claims asserted by Plaintiffs on behalf of all those similarly situated
6 meet all requirements of Fed. R. Civ. P. 23 and Nev. R. Civ. P. 23.

7 9. Pursuant to and as required by Fed. R. Civ. P. 23(a): 1) the class is so numerous
8 that joinder of all members is impracticable; 2) there are questions of law or fact that are common
9 to the class; 3) the claims and defenses of the representative parties are typical of the claims or
10 defenses of the class; and 4) the representative parties will fairly and adequately protect the
11 interest of the class.

12 10. Pursuant to and as required by Fed. R. Civ. P. 23(b): 1) prosecuting separate
13 actions would create a risk of (a) inconsistent or varying adjudications, or (b) adjudications that
14 would be dispositive of other members not parties to the individual adjudications; 2) the party that
15 would be opposing the class acted on grounds that apply generally to the class; or 3) that the court
16 finds that questions of law or fact common to class members predominate.

17 11. Cachet is a California corporation conducting business across the United States
18 and upon information and belief is a subsidiary of FBG. Cachet is not a bank or banking
19 institution.

20 12. FBG is a California corporation conducting business across the United States and
21 upon information and belief is the parent company of Cachet. Upon information and belief,
22 Cachet and FBG are alter egos of one another.

23 13. MyPayroll is a Delaware limited liability company conducting business across the
24 United States and upon information and belief is a subsidiary of both Cloud Payroll and/or
25 ValueWise.

26 14. Cloud Payroll is a Delaware limited liability company and upon information and
27 belief is a subsidiary of ValueWise.

28 15. ValueWise is a Delaware corporation conducting business across the United States

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1 and upon information and belief is the parent company of MyPayroll and Cloud Payroll. Upon
 2 information and belief, ValueWise, Cloud Payroll and MyPayroll are alter egos of one another.

3 16. Upon information and belief Mann is a resident of the State of New York. Upon
 4 information and belief Mann is the Chief Executive Officer and/or owner of ValueWise. Upon
 5 information and belief Mann is also the direct or indirect owner of both MyPayroll and Cloud
 6 Payroll. Upon information and belief, Mann is the alter ego of ValueWise, Cloud Payroll and
 7 MyPayroll.

8 17. NatPay is a Florida corporation conducting business across the United States.

9 18. Upon information and belief and at all relevant times, the Defendants were acting
 10 on behalf of one another, at the direction of one another, and as agents of one another relating to
 11 the allegations contained herein.

12 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

13 19. Prior to and at the time of the events giving rise to this action, ROI-IT utilized
 14 MyPayroll to provide payroll processing services. MyPayroll utilized Cloud Payroll and/or
 15 ValueWise as part of the payroll services provided to ROI-IT.

16 20. On August 29, 2019, ROI-IT completed its customary company payroll in the
 17 amount of \$8,759.60, with \$6,397.46 representing employee payroll and \$2,362.14 representing
 18 employer and employee payroll taxes. The \$8,756.60 included employee payroll payments to
 19 both Simmons and McAllister.

20 21. In turn, on August 30, 2019, MyPayroll, Cloud Payroll and/or ValueWise deducted
 21 \$8,756.60 from ROI-IT's bank account.

22 22. ROI-IT employees Simmons and McAllister, were paid on August 30, 2019 via
 23 direct deposit.

24 23. However, on September 5, 2019, the August 30, 2019 payroll payments to both
 25 Simmons and McAllister were withdrawn from their respective personal bank accounts. It was
 26 only later determined that the payroll payments were withdrawn by Cachet and/or FBG. Plaintiffs
 27 assert that MyPayroll, Cloud Payroll and/or ValueWise contracted with Cachet and/or FBG for
 28 purposes of processing electronic payroll fund transfers.

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1 24. On the same day, ROI-IT and Simmons received an e-mail from MyPayroll
2 identifying that the payroll account used by MyPayroll had been frozen, which prevented it from
3 generating transactions and causing reversals on recent transactions. The e-mail indicated that
4 MyPayroll would be updating its clients as to the situation as more information became available.

5 25. Later that day, ROI-IT and Simmons received a second e-mail from MyPayroll
6 identifying that it was no longer able to process any further payroll transactions and to find an
7 alternative method for processing payroll. The e-mail identified that employers should be prepared
8 to find an alternative way to pay employees including for any payroll reversals that took place.
9 The e-mail further stated that MyPayroll was working to release any funds that were in transit as a
10 result of the situation.

11 26. Because Simmons and McAllister had their payroll payments withdrawn from
12 their personal bank accounts, ROI-IT thereafter issued manual checks to both of them totaling
13 \$6,397.46.

14 27. Thereafter, on September 6, 2019, and again without any notice, explanation or
15 justification, Cachet and/or FBG withdrew funds from both Simmons and McAllister's personal
16 bank accounts for a second time.

17 28. On September 6, 2019, ROI-IT and Simmons received a message from MyPayroll
18 through its online portal that identified if any employees' accounts were debited a second time, to
19 advise those employees to contact their respective banks to reject the transaction.

20 29. Prior to learning that the withdrawals had taken place at the direction of both
21 Cachet and/or FBG, on September 6, 2019, ROI-IT and Simmons sent a demand letter to
22 MyPayroll and Cloud Payroll for the return of all monies that had been improperly taken,
23 including the amounts designated for payroll taxes.

24 30. Neither MyPayroll nor Cloud Payroll responded to ROI-IT's demand letter.

25 31. At present, neither ROI-IT, Simmons or McAllister have been repaid all amounts
26 improperly taken from them, and Simmons and McAllister have incurred expenses, fees, costs or
27 other damages relating to the withdrawal of the funds from their personal bank accounts.

28 32. Before abruptly ceasing its operations without any notice whatsoever, MyPayroll

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1 identified that it served approximately 4,000 employers across the United States. Those
2 employers, in addition to ROI-IT, also had employee payroll and payroll taxes misappropriated by
3 the Defendants. Pursuant to state and federal law, employers are required to pay employees at
4 certain intervals or on certain dates. Many of the affected employers were left scrambling to find
5 a way to pay their employees following Cachet and/or FBG's reversals.

6 33. In addition, the approximately 4,000 employers had many more employees who
7 had their payroll misappropriated from their respective bank accounts. In addition, many
8 employees had their bank accounts debited a second time in the same amount. The withdrawal of
9 these funds forced employees to incur expenses, fees, costs or other damages.

10 34. After the Defendants' fraudulent and wholly improper conduct received national
11 attention and press, Cachet made a number of public statements in an attempt to explain the
12 situation and its own conduct. Cachet explained that MyPayroll somehow redirected the August
13 30, 2019 employee payroll transfers away from a Cachet settlement account to a bank account
14 that it controlled with Pioneer Bank. The Pioneer Bank account was/is controlled by MyPayroll,
15 Cloud Payroll, ValueWise and/or Mann. At present, it is unclear whether Cachet was aware of
16 and/or approved of the transfer. At or around the same time, Cachet made the required employee
17 payroll payments in the approximate amount of \$26,000,000.00.

18 35. Thereafter, Cachet and/or FBG issued banking instructions on or about September
19 4, 2019 directing all employee banks to reverse the August 30, 2019 payroll payments. Cachet
20 and/or FBG allege that those banking instructions included incomplete/improper instructions,
21 although the respective banks complied with the instructions resulting in the withdrawal of the
22 payroll payments. The next day, Cachet and/or FBG issued a second set of banking instructions
23 directing all employee banks to yet again reverse the August 30, 2019 payroll payments. Again,
24 the employee banks complied with the instructions, which resulted in a second withdrawal from
25 employees' bank accounts.

26 36. Cachet and/or FBG were not entitled to reverse the employee payroll payments
27 issued on August 30, 2019. Nor was Cachet and/or FBG entitled to unilaterally withdraw the
28 payroll payments from employee bank accounts a second time.

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1 37. Appallingly, Wendy Slavkin, an attorney and General Counsel for Cachet, has
2 publicly stated that "as it stands today . . . the biggest victim, and really the only victim and
3 victims, is Cachet." Obviously, the statement is patently false as thousands of employers and
4 employees have had their businesses and lives uprooted by the misappropriation and fraud of the
5 Defendants and Cachet and/or FBG's wholly improper conduct.

6 38. Ms. Slavkin was also quoted as stating that all "employees affected by this will in
7 the next day or two have all their money back." As of this filing, all the funds belonging to ROI-
8 IT, Simmons and McAllister have not been returned and Plaintiffs believe the same is true for the
9 other employers and employees nationwide.

10 39. As a result, countless instances of employers and employees' financial hardship
11 have been reported. For instance, many have complained of being incapable of making mortgage
12 or rent payments. A multitude of others have been hit with various account fees after the reversal
13 of payroll payments left their bank accounts with negative balances. Others have described
14 difficulties maintaining their quality of life, as they are unable to feed their families, pay their
15 bills, or purchase gas to make it to and from work. Put simply, the effect of Defendants' fraud and
16 Cachet and/or FBG's conduct has rippled nationwide, putting many of those affected in precarious
17 financial situations as a result.

18 40. Plaintiffs also assert that MyPayroll, Cloud Payroll and/or ValueWise contracted
19 with NatPay for purposes of handling employers' tax withholdings. Therefore, NatPay, not
20 Cachet and/or FBG, was apparently responsible for the payment of payroll tax payments for
21 MyPayroll. The payroll tax liability for the payroll at issue has been identified at approximately
22 \$9,000,000.00. A portion of that \$9,000,000.00 included employer and employee payroll tax due
23 to various government entities from ROI-IT, Simmons and McAllister.

24 41. At present, it is unclear where the \$9,000,000.00 has gone and whether NatPay has
25 paid the required employer/employee payroll taxes. As such, NatPay is included as a defendant in
26 this case at present only as to Plaintiffs' claims for declaratory and injunctive relief. Plaintiffs
27 shall amend this Complaint to the extent that additional facts and claims against NatPay become
28 warranted and/or necessary.

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PROPOSED CLASSES

42. As set forth herein, nearly 4,000 employers relied on MyPayroll's services. However, in addition to the aforementioned employers, thousands of employees have been impacted by the conduct of the Defendants. The employers and employees affected span the entire United States and are not just limited to the State of Nevada.

43. Based upon the foregoing, those affected by Defendants' inappropriate and unlawful activities are best categorized into at least two classes:

a. The first proposed class includes all employers across the United States, who have been impacted and damaged by the Defendants' conduct.

b. The second proposed class includes all employees, who are undoubtedly in the tens of thousands, who have been impacted and damaged by the Defendants' conduct.¹

FIRST CAUSE OF ACTION

(Federal RICO Violation – As to All Defendants Except NatPay)

44. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

45. Plaintiffs and all others similarly situated bring this claim against Defendants pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968.

46. Section 1962 of RICO makes it unlawful for "any person employed by or associated with any enterprise engaged in, or the activities which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c).

47. Pursuant to Section 1961 of RICO, a racketeering activity may include bank fraud as defined by 18 U.S.C. § 1344 as the execution, attempt or scheme to "obtain any of the moneys, funds, credits, assets, securities or other property owned by, or under the custody or control of, a

¹ It may also be appropriate to have Nevada-specific subclasses in this matter based on the causes of action asserted herein.

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1 financial institution, by means of false or fraudulent pretenses, representations, or promises[.]" 18
2 U.S.C. § 1344(2).

3 48. MyPayroll, Cloud Payroll, ValueWise and Mann violated 18 U.S.C. § 1344(2) by
4 fraudulently rerouting employer payroll funds to a Pioneer Bank account they controlled.

5 49. Cachet and FBG also violated 18 U.S.C. § 1344(2) by illegally withdrawing
6 deposited payroll funds from employee bank accounts without any notice or authorization to do
7 so.

8 50. Moreover, pursuant to Section 1961 of RICO, a racketeering activity may also
9 include wire fraud as defined by 18 U.S.C. § 1343 as when persons "having devised or intended
10 to devise any scheme or artifice to defraud, or for obtaining money or property by means of false
11 or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by
12 means of wire, radio, or television communication in interstate or foreign commerce, any
13 writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice,
14 shall be fined under this title or imprisoned not more than 20 years, or both." 18 U.S.C. § 1343.

15 51. MyPayroll, Cloud Payroll, ValueWise and Mann violated 18 U.S.C. § 1343 by
16 transmitting fraudulent instructions to reroute employers' payroll funds to a Pioneer Bank account
17 they controlled.

18 52. Cachet and FBG also violated 18 U.S.C. § 1343 by transmitting reversals to
19 employee banks and illegally withdrawing deposited payroll funds from employee bank accounts.

20 53. Cachet operates as an automated clearing house, not a bank. Therefore, Cachet
21 was not authorized to reverse the payroll payments it made into employee bank accounts or
22 withdraw additional monies from those bank accounts.

23 54. As a result of Defendants' actions, Plaintiffs and all others similarly situated have
24 been damaged in an amount that exceeds \$5,000,000.00, exclusive of interest and costs, and are
25 entitled to any and all statutory damages.

26 55. Plaintiffs and all others similarly situated have been forced to retain counsel to
27 prosecute this action and are entitled to recover reasonable attorney's fees and costs.

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SECOND CAUSE OF ACTION
(Fraudulent or Intentional Misrepresentation –
As to All Defendants Except NatPay)

56. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

57. Defendants intentionally and falsely represented that they would properly distribute payroll funds from employer bank accounts to employee bank accounts through secure and trustworthy channels.

58. Defendants intentionally and falsely represented that they would not misappropriate or misuse the payroll funds belonging to both employers and employees.

59. Plaintiffs and all others similarly situated relied on these representations in deciding to utilize Defendants' services and/or in allowing for the transfer of payroll funds from employer to employee bank accounts by means of the Defendants' services.

60. As a result of Defendants' actions and/or inactions, Plaintiffs and all others similarly situated are entitled to damages in excess of \$5,000,000.00, exclusive of costs and interest.

61. As a result of Defendants' actions and/or inactions, Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

62. Plaintiffs and all others similarly situated are informed and believe and thereon allege that Defendants' conduct was willful, wanton and malicious and was done in conscious disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result, Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

THIRD CAUSE OF ACTION
(Conversion – As to All Defendants Except NatPay)

63. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

64. By unlawfully taking approximately \$35,000,000.00 of payroll funds and related payroll taxes, Defendants wrongfully exerted an act of dominion and control over the personal

1 property of Plaintiffs and all others similarly situated.

2 65. Defendants have exercised this dominion and control in derogation, exclusion and
3 defiance of the rights of Plaintiffs and all others similarly situated.

4 66. As a result, Plaintiffs and all others similarly situated have been damaged in an
5 amount that exceeds \$5,000,000.00, exclusive of costs and interest.

6 67. Plaintiffs and all others similarly situated have been forced to retain counsel to
7 prosecute this action and are entitled to recover reasonable attorney's fees and costs.

8 68. Plaintiffs and all others similarly situated are informed and believe and thereon
9 allege that Defendants' conduct was willful, wanton and malicious and was done in conscious
10 disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result,
11 Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

12 **FOURTH CAUSE OF ACTION**
13 **(Unjust Enrichment – As to All Defendants Except NatPay)**

14 69. Plaintiffs repeat and reallege each and every fact and allegation contained in this
15 Complaint and incorporate the same herein by reference as though fully set forth herein.

16 70. Plaintiffs and all others similarly situated conferred a benefit on Defendants by
17 utilizing their services and entrusting them to properly process and distribute their payroll funds.

18 71. Defendants have unjustly retained approximately \$35,000,000.00 of payroll funds
19 and/or related payroll taxes belonging to Plaintiffs and all others similarly situated.

20 72. As a result, Plaintiffs and all others similarly situated have been damaged in an
21 amount that exceeds \$5,000,000.00, exclusive of costs and interest.

22 73. Plaintiffs and all others similarly situated have been forced to retain counsel to
23 prosecute this action and are entitled to recover reasonable attorney's fees and costs.

24 **FIFTH CAUSE OF ACTION**
25 **(Intentional Interference with Contractual
Relations – As to All Defendants Except NatPay)**

26 74. Plaintiffs repeat and reallege each and every fact and allegation contained in this
27 Complaint and incorporate the same herein by reference as though fully set forth herein.

28 75. There exists a valid legal and contractual relationship between employers and

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employees. Employees are compensated for their work, by which employers derive a financial benefit.

76. Defendants knew of the existing valid legal and contractual relationship between such employers and employees.

77. Defendants intentionally disrupted this legal and contractual relationship by either misappropriating employer payroll funds and/or improperly withdrawing payroll funds that were rightfully owed to employees.

78. Defendants' actions and/or inactions disrupted this valid legal and contractual relationship by leaving employees unpaid for their services and by misappropriating employer payroll and tax funds.

79. As a result of Defendants' actions and/or inactions, Plaintiffs and all others similarly situated are entitled to damages in excess of \$5,000,000.00, exclusive of interest and costs.

80. Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

81. Plaintiffs and all others similarly situated are informed and believe and thereon allege that Defendants' conduct was willful, wanton and malicious and was done in conscious disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result, Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

SIXTH CAUSE OF ACTION
(Negligent Interference with Contractual Relations – As to All Defendants Except NatPay)

82. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

83. There exists a valid legal and contractual relationship between employers and employees. Employees are compensated for their work, by which employers derive a financial benefit.

84. Defendants knew or should have known of the existence of a valid legal and

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1 contractual relationship between such employers and employees, and were aware, or should have
 2 been aware, that their failure to act with due care would interfere with the valid legal and
 3 contractual relationship between them.

4 85. Defendants owed Plaintiffs and all others similarly situated a duty to ensure that
 5 that such employees received all employer payroll funds and that the employer payroll funds and
 6 payroll taxes were handled with due care.

7 86. Defendants failure to properly deposit all payroll funds into employee bank
 8 accounts constituted a breach of Defendants' duty to Plaintiffs and all others similarly situated.

9 87. As a result of Defendants' breach, the valid legal and contractual relationship
 10 between employers and employees was disrupted.

11 88. As a result of Defendants' actions and/or inactions, Plaintiffs and all others
 12 similarly situated are entitled to damages in excess of \$5,000,000.00, exclusive of interest and
 13 costs.

14 89. Plaintiffs and all others similarly situated have been forced to retain to prosecute
 15 this action and are entitled to recover reasonable attorney's fees and costs.

16 90. Plaintiffs and all others similarly situated are informed and believe and thereon
 17 allege that Defendants' conduct was willful, wanton and malicious and was done in conscious
 18 disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result,
 19 Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

20 **SEVENTH CAUSE OF ACTION**
 21 **(Intentional Interference with Prospective Economic**
 22 **Advantage – As to All Defendants Except NatPay)**

23 91. Plaintiffs repeat and reallege each and every fact and allegation contained in this
 24 Complaint and incorporate the same herein by reference as though fully set forth herein.

25 92. There exist ongoing prospective contractual relationships between employers,
 26 employees and third-parties.

27 93. Defendants knew of these prospective contractual relationships.

28 94. Defendants intentionally interfered with these prospective contractual relationships

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by misappropriating employer and employee payroll funds and payroll taxes.

95. Defendants' interference was wholly improper and resulted in actual harm to both employers and employees and their prospective contractual relationships.

96. As a result of Defendants' actions, Plaintiffs and all others similarly situated are entitled to damages in excess of \$5,000,000.00, exclusive of interest and costs.

97. Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

98. Plaintiffs and all others similarly situated are informed and believe and thereon allege that Defendants' conduct was willful, wanton and malicious and was done in conscious disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result, Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

EIGHTH CAUSE OF ACTION
(Negligent Interference with Prospective Economic Advantage – As to All Defendants Except NatPay)

99. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

100. There exist ongoing prospective contractual relationships between employers, employees and third-parties.

101. Defendants knew or should have known of the existence of these prospective contractual relationships.

102. Defendants owed Plaintiffs and all others similarly situated a duty not to interfere with these prospective contractual relationships.

103. Defendants interfered with these prospective contractual relationships by misappropriating employer and employee payroll funds and payroll taxes.

104. Defendants' interference was wholly improper and resulted in actual harm to both employers and employees and their prospective contractual relationships.

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105. As a result of Defendants' actions, Plaintiffs and all others similarly situated are entitled to damages in excess of \$5,000,000.00, exclusive of interest and costs.

106. Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

107. Plaintiffs and all others similarly situated are informed and believe and thereon allege that Defendants' conduct was willful, wanton and malicious and was done in conscious disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result, Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

NINTH CAUSE OF ACTION
(Negligence – As to All Defendants Except NatPay)

108. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

109. Defendants owed Plaintiffs and all others similarly situated a duty of care as described herein.

110. Defendants breached that duty by either misappropriating payroll funds and payroll taxes, or by improperly withdrawing payroll funds from employee bank accounts.

111. Plaintiffs and all others similarly situated have been damaged in an amount that exceeds \$5,000,000.00, exclusive of interest and costs.

112. Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

113. Plaintiffs and all others similarly situated are informed and believe and thereon allege that Defendants' conduct was willful, wanton and malicious and was done in conscious disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result, Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

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TENTH CAUSE OF ACTION
(Declaratory Relief – As to All Defendants)

114. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

115. A justiciable controversy has arisen as to who is entitled to the approximately \$35,000,000.00 of misappropriated payroll funds and payroll taxes.

116. A judicial declaration of the parties' rights is necessary to avoid any further dispute between the parties and all others similarly situated related to the issues set forth herein.

117. As a result of Defendants' actions, Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

ELEVENTH CAUSE OF ACTION
(Injunctive Relief – As to All Defendants)

118. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

119. As a result of Defendants' conduct, employer and employee funds have been fraudulently misappropriated.

120. Based upon the principles of equity, Plaintiffs and all others similarly situated are entitled to the return of any and all funds that were either misappropriated or improperly withdrawn from their bank accounts.

121. It is in the public's interest to mandate the immediate return of all stolen funds that are rightfully owed to Plaintiffs and all others similarly situated.

122. With regard to the tax payments, it is in the public's interest to mandate that NatPay and/or the other Defendants immediately make all required tax payments on behalf of both employers and employees.

123. As a result of Defendants' actions, Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

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10161 Park Run Drive, Suite 150
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TWELFTH CAUSE OF ACTION
(Nevada Deceptive Trade Practices –
As to All Defendants Except NatPay)

124. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

125. This Nevada statutory claim applies specifically to Plaintiffs individually and any other Nevada-based employer and employee.

126. On behalf of Plaintiffs and all others similarly situated, Defendants engaged in a deceptive trade practice pursuant to Nev. Rev. Stat. Ch. 598 by improperly diverting payroll funds and tax payments for their personal use and by withdrawing payroll funds and other amounts from employee bank accounts, which the Defendants had no right to do.

127. Defendants' conduct constitutes a deceptive trade practice pursuant to Nev. Rev. Stat. Ch. 598.

128. By way of example only, Defendants engaged in a deceptive trade practice by among other things, "[k]nowingly mak[ing] [a] false representation in a transaction." NRS 598.092(15).

129. In addition, Defendants deliberately and purposefully failed to notify Plaintiffs and all others similarly situated that amounts would be withdrawn from employee bank accounts. This constituted a deceptive trade practice pursuant to Nev. Rev. Stat. Ch. 598.

130. As a result of Defendants' actions and/or inactions, Plaintiffs and all others similarly situated are entitled to damages in excess of \$5,000,000.00, exclusive of interest and costs, as well as any and all statutory damages.

131. Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

132. Plaintiffs and all others similarly situated are informed and believe and thereon allege that Defendants' conduct was willful, wanton and malicious and was done in conscious disregard of Plaintiffs' rights and those of all others similarly situated. As a direct result, Plaintiffs and all others similarly situated are entitled to an award of punitive damages.

THIRTEENTH CAUSE OF ACTION**(Nevada RICO Violation – As to All Defendants Except NatPay)**

133. Plaintiffs repeat and reallege each and every fact and allegation contained in this Complaint and incorporate the same herein by reference as though fully set forth herein.

134. Plaintiffs and all others similarly situated bring this claim against Defendants pursuant to the Racketeering Act, NRS 207.350-520.

135. This Nevada statutory claim applies specifically to Plaintiffs individually and any other Nevada-based employer and employee.

136. Section 207.400 of the Racketeering Act makes it unlawful for a person "[w]ho is employed by or associated with any enterprise to conduct or participate, directly or indirectly, in . . . racketeering activity through the affairs of the enterprise." NRS 207.400(1)(c)(2).

137. Section 207.400 of the Racketeering Act also makes it unlawful "for a person to conspire to violate any of the provisions" of the Racketeering Act. NRS 207.400(1)(j).

138. In accordance with 207.360, a crime related to racketeering may include "[e]mbezzlement of money or property valued at \$650 or more [and] obtaining possession of money or property valued at \$650 or more." NRS 207.360(27)-(28).

139. Defendants embezzled \$35,000,000.00 in employer payroll funds and related payroll taxes, which constitutes a clear violation of NRS 207.400(1)(c)(2).

140. As a result of Defendants' actions, Plaintiffs and all others similarly situated have been damaged in an amount that exceeds \$5,000,000.00, exclusive of interest and costs and are entitled to any and all statutory damages.

141. Plaintiffs and all others similarly situated have been forced to retain counsel to prosecute this action and are entitled to recover reasonable attorney's fees and costs.

WHEREFORE, Plaintiffs and all others similarly situated pray for judgment as follows:

- A. For damages in an amount to be determined at trial, but in excess of \$5,000,000.00;
- B. For exemplary or punitive damages;
- C. For any and all statutory damages;

- 1 C. Attorney's fees and costs of suit;
2 E. Prejudgment and post-judgment interest on the amounts owed;
3 F. For declaratory relief as set forth above;
4 G. For injunctive relief as set forth above; and
5 H. Any further relief this Court deems proper.

6 DATED this 16th day of September, 2019

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8 SEMENZA KIRCHER RICKARD

9 /s/ Lawrence J. Semenza, III

10 Lawrence J. Semenza, III, Esq., Bar No. 7174
11 Christopher D. Kircher, Esq., Bar No. 11176
12 Jarrod L. Rickard, Esq., Bar No. 10203
13 Katie L. Cannata, Esq. Bar No. 14848
14 10161 Park Run Drive, Ste. 150
15 Las Vegas, Nevada 89145

16 *Attorneys for Plaintiffs Sarah Simmons, Aaron Mc*
17 *Allister, ROI-IT, LLC and all others similarly*
18 *situated*
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SEMENTA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803